

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> United States of America	DEFENDANTS Imperial Toy Corporation, a corporation, and Fred Kort, an individual
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):	County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): Los Angeles
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Amy E. Goldfrank, United States Department of Justice, Office of Consumer Litigation, 1331 Pennsylvania Ave., N.W., Suite 950N Washington, DC 20002. (202) 307-0050	Attorneys (If Known) Harvey Friedman, Esq. Greenberg, Glusker, Fields, Claman, Machtinger & Kinsella, LLP 1900 Avenue of the Stars; 21st Floor Los Angeles, CA 90067

II. BASIS OF JURISDICTION (Place an X in one box only.) <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width: 100%;"><tr><td style="width: 30%;"></td><td style="width: 10%; text-align: center;">PTF</td><td style="width: 10%; text-align: center;">DEF</td><td style="width: 40%;"></td><td style="width: 10%; text-align: center;">PTF</td><td style="width: 10%; text-align: center;">D</td></tr><tr><td>Citizen of This State</td><td style="text-align: center;"><input type="checkbox"/> 1</td><td style="text-align: center;"><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td style="text-align: center;"><input type="checkbox"/> 4</td><td></td></tr><tr><td>Citizen of Another State</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td style="text-align: center;"><input type="checkbox"/> 5</td><td></td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td>Foreign Nation</td><td style="text-align: center;"><input type="checkbox"/> 6</td><td></td></tr></table>		PTF	DEF		PTF	D	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4		Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6																					

IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to Dis Judge from Magistrate Jud

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff brings this action under the Federal Hazardous Substances Act, 15 U.S.C. §§ 1264(c) to recover civil penalties for defendants knowingly introducing or causing the introduction and/or delivery for introduction into interstate commerce of banned hazardous substances.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input checked="" type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standard Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litiga <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUIT <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☐ No ☒ Yes

If yes, list case number(s): _____

FOR OFFICE USE ONLY: Case Number: _____

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM JS-44C, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Appear to arise from the same or substantially identical transactions, happenings, or events;
☐ B. Involve the same or substantially the same parties or property;
☐ C. Involve the same patent, trademark or copyright;
☐ D. Call for determination of the same or substantially identical questions of law, or
☐ E. Likely for other reasons may entail unnecessary duplication of labor if heard by different judges.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☒ Check here if the U.S. government, its agencies or employees is a named plaintiff.

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

Imperial Toy Corporation, Los Angeles County

Fred Kort, Los Angeles County

List the California County, or State if other than California, in which **EACH claim arose.** (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Amy E. Goldfrank /hil Date 5/15/03

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR, PLAINTIFF OR
DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

Amy E. Goldfrank
United States Department of Justice
Office of Consumer Litigation
1331 Pennsylvania Ave., N.W.
Suite 950N
Washington, DC 20002
(202) 307-0050

ATTORNEYS FOR: Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

United States of America

Plaintiff(s),

v.

Imperial Toy Corporation,
a corporation, and Fred Kort,
an individual

Defendant(s)

CASE NUMBER

03 - 3448

CERTIFICATION AND NOTICE
OF INTERESTED PARTIES
(Local Rule 83-1.5)

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

2003 MAY 16 AM 11:42

FILED

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TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for United States of America
(or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary
interest in the outcome of this case. These representations are made to enable the Court to evaluate possible
disqualification or recusal. (Use additional sheet if necessary.)

PARTY

CONNECTION

(List the names of all such parties and identify their connection and interest.)

Imperial Toy Corporation
Fred Kort

Defendant
Defendant

Date

5/15/03

Sign

Amy E. Goldfrank / hif

Amy E. Goldfrank

Attorney of record for or party appearing in pro per

FILED

2003 MAY 16 AM 11:42

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

DEBRA W. YANG
United States Attorney

ROBERT D. MCCALLUM, JR.
Assistant Attorney General
Civil Division
U.S. Department of Justice

AMY E. GOLDFRANK
Trial Attorney
U.S. Department of Justice
Office of Consumer Litigation
P.O. Box 386
Washington, D.C. 20044
Tel: (202) 307-0050
Fax: (202) 514-8742

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	NO. - 03 - 3448
)	
Plaintiff,)	COMPLAINT FOR
)	CIVIL PENALTIES,
v.)	INJUNCTION AND
)	OTHER RELIEF
IMPERIAL TOY CORPORATION,)	
a corporation, and FRED KORT,)	
an individual,)	
)	
Defendants.)	

Plaintiff, the United States of America, by its undersigned
attorneys, for its complaint alleges that:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant
to 28 U.S.C. §§ 1331, 1345 and 1355(a).

2. Venue in the Central District of California is proper
under 28 U.S.C. §§ 1391(b) and (c).

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3. Plaintiff brings this action under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. §§ 1264(c) and 1267(a), to recover civil penalties and to obtain injunctive relief for defendants knowingly introducing or causing the introduction and/or delivery for introduction into interstate commerce of banned hazardous substances, and/or the receipt in interstate commerce of banned hazardous substances and the delivery or proffered delivery thereof for pay or otherwise, in violation of the FHSA, 15 U.S.C. §§ 1263 (a) and (c).

4. Plaintiff administers the FHSA and related regulations through the United States Consumer Product Safety Commission ("Commission" or "CPSC"). The CPSC is an independent federal agency that was created to protect the public against unreasonable risks of injury from consumer products. 15 U.S.C. §§ 2051(b)(1) and 2053(a).

DEFENDANTS

5. Defendant Imperial Toy Corporation ("Imperial Toy") is a corporation organized and existing under the laws of California, located at 2060 East 7th Street, Los Angeles, California, 90021. Imperial Toy is a manufacturer, importer, and distributor of children's toys that are subject to the requirements of the FHSA and the regulations issued thereunder.

6. Defendant Fred Kort is the president of Imperial Toy and, as such, is the individual responsible for ensuring compliance with the requirements of the FHSA and the regulations

1 issued thereunder. At times relevant to this Complaint, Fred
2 Kort knew of, and had authority to control the acts and practices
3 of, Imperial Toy.

4 BACKGROUND

5 7. The FHSA and regulations issued thereunder ban, *inter*
6 *alia*, toys that present a mechanical hazard because of the risk
7 of choking, aspiration or ingestion. 15 U.S.C. §§ 1261(f)(1)(D),
8 1261(q)(1)(A), 1261(s); 16 C.F.R. § 1500.18(a)(9) and 16 C.F.R.
9 Part 1501 ("small parts regulations").
10

11 8. Under the FHSA and the small parts regulations, toys
12 and other articles intended for use by children under three years
13 of age are banned hazardous substances if they fail to meet
14 specified test criteria. Under these criteria, no portion of a
15 toy may separate and produce small parts that fit entirely into
16 the specified test fixture, before or after the toy is subjected
17 to use and abuse tests at 16 C.F.R. §§ 1500.50 - 1500.52.
18

19 VIOLATIONS OF THE FEDERAL HAZARDOUS SUBSTANCES ACT

20 COUNT ONE

21 9. On or about May 20, 1998, defendants introduced or
22 caused the introduction and/or delivery for introduction into
23 interstate commerce, and/or the receipt in interstate commerce
24 and the delivery or proffered delivery thereof for pay or
25 otherwise, of 4,320 units of the Candy Road Machine, Product
26 4669, which is a banned hazardous substance.

27 10. The product identified in paragraph 9 is a "toy or
28 other article intended for use by children" that "presents . . .

1 [a] mechanical . . . hazard" and is therefore a "hazardous
2 substance" within the meaning of the FHSA. 15 U.S.C.
3 §§ 1261(f)(1)(D) and 1261(s).

4 11. The Commission's experts found that the toy identified
5 in paragraph 9 is intended for use by children under three years
6 of age and thus is subject to the small parts regulations.
7

8 12. The toy identified in paragraph 9 fails to meet the
9 test criteria for small parts because when it was subjected to
10 the applicable use and abuse testing, portions of the toy
11 separated and produced small parts that fit entirely into the
12 specified test fixture. Accordingly, the toy is a "banned
13 hazardous substance" within the meaning of the FHSA and the small
14 parts regulations.

15 13. On or about June 24, 1998, the Commission notified the
16 defendants that the toy identified in paragraph 9 was a banned
17 hazardous substance and that its importation violated the FHSA.
18

19 14. Notwithstanding the notice identified in paragraph 13,
20 defendants subsequently continued, on numerous occasions, to
21 introduce or cause the introduction and/or delivery for
22 introduction into interstate commerce, and/or the receipt in
23 interstate commerce and the delivery or proffered delivery
24 thereof for pay or otherwise, of more than 20,000 units of the
25 Candy Road Machine, Product 4669.

26 COUNT TWO

27 15. On or between October 4, 2000 and October 11, 2000,
28 defendants introduced or caused the introduction and/or delivery

1 for introduction into interstate commerce, and/or the receipt in
2 interstate commerce and the delivery or proffered delivery
3 thereof for pay or otherwise, of 5,760 units of the Cuddles
4 Feeding Set, Product 8327, which is a banned hazardous substance.

5 16. The product identified in paragraph 15 is a "toy or
6 other article intended for use by children" that "presents . . .
7 [a] mechanical . . . hazard" and is therefore a "hazardous
8 substance" within the meaning of the FHSA. 15 U.S.C.
9 §§ 1261(f)(1)(D) and 1261(s).
10

11 17. The Commission's experts found that the toy identified
12 in paragraph 15 is intended for use by children under three years
13 of age and thus is subject to the small parts regulations.

14 18. The toy identified in paragraph 15 fails to meet the
15 test criteria for small parts because when it was subjected to
16 the applicable use and abuse testing, portions of the toy
17 separated and produced small parts that fit entirely into the
18 specified test fixture. Accordingly, the toy is a "banned
19 hazardous substance" within the meaning of the FHSA and the small
20 parts regulations.
21

22 19. On or about May 24, 2001, the Commission informed the
23 defendants that the toy identified in paragraph 15 was a banned
24 hazardous substance and that its importation violated the FHSA.

25 CIVIL PENALTIES

26 20. Defendants knowingly introduced or caused the
27 introduction and/or delivery for introduction into interstate
28 commerce, and/or the receipt in interstate commerce and the

1 delivery or proffered delivery thereof for pay or otherwise, of
2 numerous banned hazardous substances. Accordingly, defendants
3 knowingly violated 15 U.S.C. § 1263 and therefore are subject to
4 civil penalties for each and every such violation pursuant to 15
5 U.S.C. § 1264(c).

6
7 INJUNCTION

8 21. Based on defendants' past and present courses of
9 conduct, there is a substantial likelihood that, unless
10 restrained by order of this Court pursuant to 15 U.S.C.
11 § 1267(a), defendants will continue to introduce or cause the
12 introduction, and/or delivery for introduction into interstate
13 commerce, and/or receipt in interstate commerce and delivery or
14 proffered delivery thereof for pay or otherwise, of banned
15 hazardous substances in violation of 15 U.S.C. §§ 1263(a) and
16 (c).

17 PRAYER

18 WHEREFORE, plaintiff respectfully requests that this Court:

19
20 1. Assess civil penalties against defendants in accordance
21 with the FHSA, 15 U.S.C. § 1264(c), for violating the FHSA,
22 15 U.S.C. § 1263, by knowingly introducing or causing the
23 introduction and/or delivery for introduction into interstate
24 commerce, and/or receipt in interstate commerce and delivery or
25 proffered delivery thereof for pay or otherwise, of banned
26 hazardous substances, as alleged in this Complaint.

27 2. Pursuant to 15 U.S.C. § 1267(a), permanently restrain
28 and enjoin defendants, and each and all of their officers,

1 agents, employees, attorneys, successors and assigns, and those
2 persons in active concert or participation with them, from
3 directly or indirectly introducing or causing the introduction
4 and/or delivery for introduction into interstate commerce, and/or
5 the receipt in interstate commerce and the delivery or proffered
6 delivery thereof for pay or otherwise, of banned hazardous
7 substances in violation of 15 U.S.C. §§ 1263(a) and (c).
8

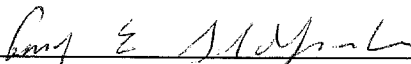
9 3. Grant plaintiff judgment for its costs and such other
10 and further relief as it deems necessary and proper.
11

12 DATED:

13 Respectfully submitted,

14 DEBRA W. YANG
15 United States Attorney

16 ROBERT D. MCCALLUM, JR.
17 Assistant Attorney General
18 Civil Division
19 U.S. Department of Justice

20 
21 AMY E. GOLDFRANK
22 Trial Attorney
23 U.S. Department of Justice
24 Office of Consumer Litigation
25 P.O. Box 386
26 Washington, D.C. 20044
27 (202) 307-0050
28

1 OF COUNSEL:

2 WILLIAM H. DuROSS, III
3 General Counsel

4 ALAN SHAKIN
5 Assistant General Counsel

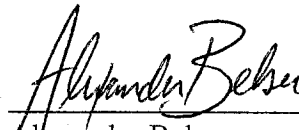
6 PATRICIA E. KENNEDY
7 Attorney
8 U.S. Consumer Product
9 Safety Commission
Bethesda, MD 20814

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify under a penalty of perjury that on the fifteenth day of May, 2003, I sent by Federal Express a copy of the Complaint for Civil Penalties, Injunction and Other Relief and the Notice of Interested Parties properly addressed to:

Harvey Friedman, Esq.
Greenberg, Glusker, Fields, Claman,
Machtiger & Kinsella, LLP
1900 Avenue of the Stars
21st Floor
Los Angeles, CA 90067

A handwritten signature in cursive script, reading "Alexander Belser", written over a horizontal line.

Alexander Belser
Paralegal Specialist
United States Department of Justice
Office of Consumer Litigation
P.O. Box 386
Washington, D.C. 20044

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DEBRA W. YANG
United States Attorney

ROBERT D. MCCALLUM, JR.
Assistant Attorney General
Civil Division
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Trial Attorney
U.S. Department of Justice
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Tel: (202) 307-0050
Fax: (202) 514-8742

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	NO. 03-3448
)	
Plaintiff,)	COMPLAINT FOR
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an individual,)	
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Defendants.)	

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4. Plaintiff administers the FHSA and related regulations through the United States Consumer Product Safety Commission ("Commission" or "CPSC"). The CPSC is an independent federal agency that was created to protect the public against unreasonable risks of injury from consumer products. 15 U.S.C. §§ 2051(b)(1) and 2053(a).

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6. Defendant Fred Kort is the president of Imperial Toy and, as such, is the individual responsible for ensuring compliance with the requirements of the FHSA and the regulations

1 issued thereunder. At times relevant to this Complaint, Fred
2 Kort knew of, and had authority to control the acts and practices
3 of, Imperial Toy.

4 BACKGROUND

5 7. The FHSA and regulations issued thereunder ban, *inter*
6 *alia*, toys that present a mechanical hazard because of the risk
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19 14. Notwithstanding the notice identified in paragraph 13,
20 defendants subsequently continued, on numerous occasions, to
21 introduce or cause the introduction and/or delivery for
22 introduction into interstate commerce, and/or the receipt in
23 interstate commerce and the delivery or proffered delivery
24 thereof for pay or otherwise, of more than 20,000 units of the
25 Candy Road Machine, Product 4669.

26 COUNT TWO

27 15. On or between October 4, 2000 and October 11, 2000,
28 defendants introduced or caused the introduction and/or delivery

1 for introduction into interstate commerce, and/or the receipt in
2 interstate commerce and the delivery or proffered delivery
3 thereof for pay or otherwise, of 5,760 units of the Cuddles
4 Feeding Set, Product 8327, which is a banned hazardous substance.

5 16. The product identified in paragraph 15 is a "toy or
6 other article intended for use by children" that "presents . . .
7 [a] mechanical . . . hazard" and is therefore a "hazardous
8 substance" within the meaning of the FHSA. 15 U.S.C.
9 §§ 1261(f)(1)(D) and 1261(s).

10 17. The Commission's experts found that the toy identified
11 in paragraph 15 is intended for use by children under three years
12 of age and thus is subject to the small parts regulations.

13 18. The toy identified in paragraph 15 fails to meet the
14 test criteria for small parts because when it was subjected to
15 the applicable use and abuse testing, portions of the toy
16 separated and produced small parts that fit entirely into the
17 specified test fixture. Accordingly, the toy is a "banned
18 hazardous substance" within the meaning of the FHSA and the small
19 parts regulations.
20
21

22 19. On or about May 24, 2001, the Commission informed the
23 defendants that the toy identified in paragraph 15 was a banned
24 hazardous substance and that its importation violated the FHSA.

25 CIVIL PENALTIES

26 20. Defendants knowingly introduced or caused the
27 introduction and/or delivery for introduction into interstate
28 commerce, and/or the receipt in interstate commerce and the

1 delivery or proffered delivery thereof for pay or otherwise, of
2 numerous banned hazardous substances. Accordingly, defendants
3 knowingly violated 15 U.S.C. § 1263 and therefore are subject to
4 civil penalties for each and every such violation pursuant to 15
5 U.S.C. § 1264(c).

6
7 INJUNCTION

8 21. Based on defendants' past and present courses of
9 conduct, there is a substantial likelihood that, unless
10 restrained by order of this Court pursuant to 15 U.S.C.
11 § 1267(a), defendants will continue to introduce or cause the
12 introduction, and/or delivery for introduction into interstate
13 commerce, and/or receipt in interstate commerce and delivery or
14 proffered delivery thereof for pay or otherwise, of banned
15 hazardous substances in violation of 15 U.S.C. §§ 1263(a) and
16 (c).

17 PRAYER

18 WHEREFORE, plaintiff respectfully requests that this Court:

19 1. Assess civil penalties against defendants in accordance
20 with the FHSA, 15 U.S.C. § 1264(c), for violating the FHSA,
21 15 U.S.C. § 1263, by knowingly introducing or causing the
22 introduction and/or delivery for introduction into interstate
23 commerce, and/or receipt in interstate commerce and delivery or
24 proffered delivery thereof for pay or otherwise, of banned
25 hazardous substances, as alleged in this Complaint.
26

27 2. Pursuant to 15 U.S.C. § 1267(a), permanently restrain
28 and enjoin defendants, and each and all of their officers,

1 agents, employees, attorneys, successors and assigns, and those
2 persons in active concert or participation with them, from
3 directly or indirectly introducing or causing the introduction
4 and/or delivery for introduction into interstate commerce, and/or
5 the receipt in interstate commerce and the delivery or proffered
6 delivery thereof for pay or otherwise, of banned hazardous
7 substances in violation of 15 U.S.C. §§ 1263(a) and (c).
8

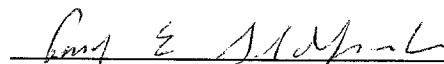
9 3. Grant plaintiff judgment for its costs and such other
10 and further relief as it deems necessary and proper.
11

12 DATED:

13 Respectfully submitted,

14 DEBRA W. YANG
15 United States Attorney

16 ROBERT D. MCCALLUM, JR.
17 Assistant Attorney General
18 Civil Division
19 U.S. Department of Justice

20 
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11 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

This is to certify under a penalty of perjury that on the fifteenth day of May, 2003, I sent by Federal Express a copy of the Complaint for Civil Penalties, Injunction and Other Relief and the Notice of Interested Parties properly addressed to:

Harvey Friedman, Esq.
Greenberg, Glusker, Fields, Claman,
Machtiger & Kinsella, LLP
1900 Avenue of the Stars
21st Floor
Los Angeles, CA 90067

A handwritten signature in cursive script, reading "Alexander Belser", written over a horizontal line.

Alexander Belser
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